

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-20461
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALFRED R. RIOS,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. H:97-CR-83-1
- - - - -

April 19, 1999

Before JONES, SMITH, and DUHÉ, Circuit Judges.

PER CURIAM:*

Alfred R. Rios appeals his jury-verdict conviction and sentence for knowingly making false statements to a federally-insured bank, in violation of 18 U.S.C. § 1014. He argues that the district court abused its discretion by excluding evidence of his military record. The district court's evidentiary rulings are reviewed for an abuse of discretion. United States v. Marrero, 904 F.2d 251, 259 (5th Cir. 1990). Because such evidence is not relevant to the charge against Rios or to his

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

defense, the district court was within its discretion to exclude it. See Fed. R. Evid. 405(b).

Rios also argues that the district court erred by applying a two-level increase to his sentence for abuse of trust pursuant to U.S.S.G. § 3B1.3. Section 3B1.3 authorizes a two-level increase if "the defendant abused a position of public or private trust, or used a special skill, in a manner that significantly facilitated the commission or concealment of the offense." § 3B1.3. The district court's application of § 3B1.3 "involves a sophisticated factual determination" and is therefore reviewed for clear error. United States v. Brown, 7 F.3d 1155, 1161 (5th Cir. 1993). The district court's application of § 3B1.3 was supported by the findings of the presentence report ("PSR"), and Rios failed to present any evidence to rebut the PSR's findings. The district court's application of § 3B1.3 was not clearly erroneous.

AFFIRMED.